

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

**FILED**

NOV 13 2007

JIMMY LYN FARRELL,

Plaintiff,

vs.

UNIT STAFF: UNIT MANAGER  
PRESTON et al.,

Defendants.

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY W.A. DEPUTY

No. 07-465-W

**ORDER**

On October 15, 2007, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation addressing the request of plaintiff Jimmy Lyn Farrell for judgment by default and a Report and Recommendation addressing the Motion to Dismiss/Motion for Summary Judgment filed by the defendants. The parties were advised that they had the right to object, but no objections have been timely filed.

Upon review of the record and in the absence of any objection, the Court concurs with Magistrate Judge Bacharach's suggested disposition of these matters. Farrell has advanced claims under title 42, section 1983 of the United States Code, the Americans With Disabilities Act, 42 U.S.C. § 12131 et seq., and the Rehabilitation Act, 29 U.S.C. § 794. Based upon extant law, the Court finds that the defendants are entitled to dismissal without prejudice of those claims in Farrell's amended complaint that seek monetary relief, if any, from the defendants in their official capacities because such claims are barred by the eleventh amendment to the United States Constitution. The Court further finds that the defendants are also entitled to dismissal without prejudice of Farrell's federal statutory

claims against the defendants in their individual capacities for failure to exhaust administrative remedies. E.g., 42 U.S.C. § 1997e(a).

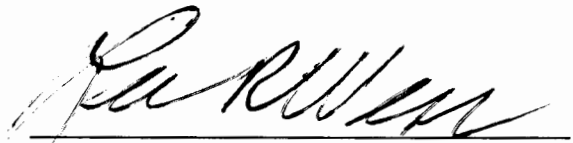
The Court likewise finds that Farrell's arguments regarding the timeliness of the defendants' Motion to Dismiss/Motion for Summary Judgment are without merit and that the defendants' motions were timely filed.

Accordingly, the Court

(1) ADOPTS the Report and Recommendation [Doc. 35] issued on October 15, 2007, and in so doing, DENIES Farrell's Motion for Relief for Failure to Make Timely Response [Doc. 34, Attachment 2] file-stamped September 13, 2007; and

(2) ADOPTS the Report and Recommendation [Doc. 36] also issued on October 15, 2007, and in so doing, GRANTS the defendants' Motion to Dismiss/Motion for Summary Judgment [Doc. 31] filed on September 4, 2007, to the extent that all claims and causes of action asserted by Farrell in his amended complaint should be and are hereby DISMISSED without prejudice.

ENTERED this 13<sup>th</sup> day of November, 2007.

  
LEE R. WEST  
UNITED STATES DISTRICT JUDGE